

## **APPENDIX B**

## APPENDIX B

## Mr. Martoma Had Many Reasons To Sell Elan And Wyeth Stock In July 2008

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
<b>(1) SAC'S BUSINESS MODEL WAS TO TAKE AND SELL LARGE POSITIONS IN SHORT PERIODS OF TIME.</b>		
Dan Berkowitz testified that SAC routinely built up large positions and sold them over short periods of time.	Tr. 505:12-21.	<p>12 Q. And it's true that SAC would invest in some companies in</p> <p>13 large amounts and sometimes hold onto those shares for a while,</p> <p>14 correct?</p> <p>15 A. Sure.</p> <p>16 Q. But it was also routine practice for SAC to build very</p> <p>17 large positions, hundreds of millions of dollars, and then exit</p> <p>18 or sell those positions very rapidly, wasn't it?</p> <p>19 A. Yes.</p> <p>20 Q. That was routine at SAC?</p> <p>21 A. It happens.</p>
Chandler Bocklage testified that it was not unusual at SAC to sell large positions in short periods of time.	Tr. 2549:13-21.	<p>13 Q. Mr. Bocklage, is it unusual at SAC to unwind or sell very</p> <p>14 large positions in short periods of time?</p> <p>15 A. Not at all. That's kind of how we do things. You are kind</p> <p>16 of in it or you are out of it. And if a position has worked or</p> <p>17 not worked in your favor and you just changed your mind, it's</p> <p>18 time to sell it; you are out of it.</p> <p>19 Q. And that could include positions worth hundreds of millions</p> <p>20 of dollars?</p> <p>21 A. It could include any position.</p>
Phillipp Villhauer testified that it was not unusual at SAC to sell large positions in short periods of time.	Tr. 2313:1-19.	<p>1 Q. And is it fair to say that it was not unusual at SAC to</p> <p>2 unwind or sell very large positions in relatively short periods</p> <p>3 of time?</p> <p>4 A. It is not unusual.</p> <p>5 Q. In fact, in your career at SAC, and even in 2008, there</p> <p>6 were instances where you would sell more than \$300 million</p> <p>7 worth of stock within a week or so, isn't that right?</p> <p>8 A. That is right.</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		<p>9 Q. And it's also possible that Mr. Cohen would give you</p> <p>10 directions to sell a very large amount of stock, and it's</p> <p>11 possible he would change his mind the very next day and you</p> <p>12 would be buying that stock the next day, isn't that right?</p> <p>13 A. It is possible he would change his mind that day, also.</p> <p>14 Q. That is, not only might he change his mind the next day, he</p> <p>15 might change his mind the very same day?</p> <p>16 A. Yes. There have been circumstances where we have actually</p> <p>17 changed our direction two or three times in a single day.</p> <p>18 Q. And in very large amounts, isn't that right?</p> <p>19 A. Yes.</p>
<b>(2) THE UNITED STATES WAS FACING A GLOBAL ECONOMIC CRISIS.</b>		
Peter Nussbaum testified that July 2008 was a period of extreme anxiety in the market.	Tr. 2470:15-23.	<p>15 Q. OK, Mr. Nussbaum, let me change topics on you. And let's</p> <p>16 talk about the state of the market in July of 2008.</p> <p>17 Can you tell us about, in general, what the state of</p> <p>18 the financial markets were in around mid-2008, July 2008?</p> <p>19 A. Well, 2008, and particularly July, was a period of extreme</p> <p>20 I would say anxiety. It only appears not to be so anxious such</p> <p>21 an extreme period because of what happened in September and</p> <p>22 October, but I would say it was a relatively unprecedented</p> <p>23 period certainly in my career.</p>
Steve Cohen circulated firm-wide e-mails in July 2008 warning of the downward trending market.	DX 505 (July 6, 2008, e-mail from e-mail from Mr. Cohen to all SAC analysts & portfolio managers).	Subject: "Unless oil trades down dramatically, I don't see how the market holds these levels – I would use rallies to sell."
	DX 241 (July 15, 2008, e-mail from Mr. Cohen to all SAC analysts &	"I haven't expressed my views in a while. While the decline doesn't appear to be over, it appears that things are falling into place for a low over the next couple of weeks. We are incredibly oversold and sentiment is pretty bad. I haven't figured out what the

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
	portfolio managers).	catalyst will be but I'm sure something will appear. I want to be clear that any rally that comes will be a 1-2 month affair followed by additional weakness. The rally will be playable before the bear trend reasserts itself. Let me reiterate that the indexes could see new lows over the next couple of weeks before a short term bottom is put in place."
Peter Nussbaum testified that the SEC issued an emergency order aimed at financial institutions on July 15, 2008, warning of "panic selling" of securities.	DX 1196, at 1 (Securities Exchange Act of 1934 Release No. 58166, dated July 15, 2008).	"False rumors can lead to a loss of confidence in our markets. Such loss of confidence can lead to panic selling, which may be further exacerbated by 'naked' short selling. As a result, the prices of securities may artificially and unnecessarily decline well below the price level that would have resulted from the normal price discovery process. If significant financial institutions are involved, this chain of events can threaten disruption of our markets."
	Tr. 2473:9-19.	[Peter Nussbaum discussing DX 1196]  9 Q. And do you see, Mr. Nussbaum, that that was, as you 10 remembered, dated July 15th of 2008? 11 A. Yes. 12 Q. And I believe you testified that the memo sending the 13 detailed summary of the order was sent to the portfolio 14 managers at the end of the day on July 18th, that Friday, 15 right? 16 A. Correct. After the markets closed. 17 Q. And is it fair to say that this was also reported on widely 18 in the financial press when the SEC issued this order? 19 A. That's my memory. Correct.
Peter Nussbaum testified that on July 18, 2008, SAC distributed the SEC order to all portfolio managers at SAC, including Mr. Martoma.	Tr. 2471:17-2472:7.	17 Q. And was this SEC order the subject of a memorandum that you 18 had your staff distribute to all of the portfolio managers who 19 worked at SAC Capital? 20 A. Yes. We did two things. So the order, to my recollection, 21 was issued I'm going to say at the close of business or late in 22 the day on the 15th of July. Relatively shortly thereafter,

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		<p>23 what we did was we got educated about it, learned what it said,  24 and we talked to and distributed a memo to the people in the  25 financial space who might likely be trading those securities.  1 And then on the 18th, at the close of business --  2 after the close of business on that Friday, which was the 18th,  3 we circulated a memo to the whole front office of the firm,  4 which is portfolio managers, analysts, traders and the  5 management team, explaining about this new emergency order and  6 the procedures that we were adopting to ensure that we complied  7 with it.</p>
<p>Peter Nussbaum testified that in addition to the SEC emergency order, there were false rumors circulating in the financial industry that had a direct impact on SAC and caused even more volatility in the market.</p>	<p>Tr. 2491:18-2492:21.</p>	<p>18 Q. Let me just ask you really one question or maybe one series  19 of questions, Mr. Nussbaum. The prosecutor asked you about  20 rumors in the marketplace at the time of that SEC order in  21 mid-July of 2008. Do you remember that?  22 A. Yes.  23 Q. In fact, you remember that one of the very significant  24 rumors occurring at that time had to do with Lehman Brothers,  25 right?  1 A. Correct.  2 Q. Can you share with the jury with that rumor was?  3 A. So, people had been concerned in the markets since Bear  4 Stearns as to who would be next, and Lehman Brothers was the  5 first on the list of potential firms.  6 On Thursday, before the July 15 -- so that would be  7 Thursday, I believe, July 10 -- there was two rumors about  8 Lehman Brothers that circulated in the market. One was that a  9 big fixed bond trading firm called PIMCO, a very big mutual  10 fund, had stopped doing business with Lehman, and shortly  11 thereafter the rumor came out that SAC had stopped doing  12 business with Lehman. And one of those might have come out on  13 the Wednesday, but it was all over the street by 10:00 on  14 Thursday, July 10.</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		<p>15 Q. Did those rumors contribute to the volatility that was</p> <p>16 being experienced in the markets at that time?</p> <p>17 A. Well, so my recollection -- although I haven't gone back</p> <p>18 and checked Lehman stock prices -- it certainly contributed to</p> <p>19 the anxiety to the point where Lehman actually asked us to put</p> <p>20 out a press release denying -- because it wasn't true --</p> <p>21 denying the rumor.</p>
Timothy Jandovitz was also wary of the Lehman Brothers rumors in July 2008 and shared his concerns with Mr. Martoma.	DX 502 (July 10, 2008, e-mail from Jandovitz to Evans, Martoma, Miller and Pardi).	"This feels like BSC all over again. Rumor that PIMCO just pulled all their biz from LEH. LEH down 17%"
Timothy Jandovitz sent e-mails to Mr. Martoma in late June and July 2008 relaying his fears of a market decline.	DX 507 (June 23, 2008, e-mail from Jandovitz to Martoma).	"I feel like there is 1 more 'shoe to drop' in this market, which will take it lower. That's when I would be adding to IMCL."
	DX 503 (July 8, 2008, e-mail from Jandovitz to Evans, Martoma, and Pardi).	<p>Subject: "FW: Bay Crest Morning Comments 7/8 – crash bet"</p> <p>"interesting to note that this strategist (who I think is pretty good) is comparing this period to the July 2002 period. I have been saying that the current environment feels a lot like July 2002. A big puke is coming. Not sure if it's going to be based on FNM/FRE raising a huge amount of capital, MER or C announcing further sizeable writedowns, or another event, but it will come in the next 2 weeks."</p>
	DX 504 (July 9, 2008, e-mail from Jandovitz to Evans, Martoma, Pardi and Miller).	Subject: "Oil down, stocks down, no es bueno folks"
Mr. Martoma discussed	DX 509 (July 15, 2008,	Subject: "FW: House GOP Leaders Call for Hearings on Treasury's Proposed Rescue

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
fears of a market decline with Timothy Jandovitz in July 2008.	e-mail from Martoma to Jandovitz).	of Freddie Mac & Fannie Mae”  “Fyi...prob not good for a rally.”
Dan Berkowitz testified that there were concerns within SAC about the volatility of the market in mid-2008.	Tr. 510:22-511:3.	22 Q. Do you recall in 2008 Bear Stearns collapsed in March of 23 2008? 24 A. Yes. 25 Q. And is it fair to say that there were concerns within SAC 1 about the volatility of the market in late spring/early summer, 2 after Bear Stearns’ collapse? 3 A. Yes.
Chandler Bocklage testified that the market was “incredibly tenuous” in 2008.	Tr. 2553:6-11.	6 Q. Mr. Bocklage, could you describe the general sentiment of 7 the market in 2008? 8 A. Well, 2008 was obviously part of the financial crisis, and 9 the market was incredibly tenuous. It was very scary times. 10 Stocks were dropping at a very fast clip every day. So it was 11 bad.
<b>(3) ANALYSTS WERE ADVISING INVESTORS TO SELL BECAUSE THE MARKET FOR ELAN WAS OVERHEATED.</b>		
Mr. Martoma received a Cowen & Co. report with a “Neutral” recommendation for Elan on July 21, 2008.	DX 20-A (July 21, 2008, e-mail from Cowen US Equity Research to Martoma attaching its report); DX 1144-A (July 21, 2008, Cowen & Co. report).	“With bapineuzumab Phase III data 2+ years away following the Phase II data presentation, we believe ELN shares have little near-time upside potential regardless of the strength of the data presentation.” (DX 1144-A, at 2.)
Professor Paul Gompers explained why there were no near-term catalyst events following ICAD	Tr. 2589:24-2590:11; DX 1144-A (July 21, 2008, Cowen & Co. report).	[ <i>Professor Gompers discussing DX 1144-A</i> ]  24 THE COURT: So the question has to be what is his 25 understanding of why the Cowen analyst believes that there is

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
that were likely to increase Elan's price.		<p>1 little near-term upside potential to the shares.</p> <p>2 MR. BRACERAS: Thank you, your Honor. I don't think I</p> <p>3 could ask it any better.</p> <p>4 A. It's my understanding that through this analysis, one of</p> <p>5 the things that the analyst says throughout the report is that</p> <p>6 baked into the price is this expectation of blockbuster status</p> <p>7 already, and, you know, no matter what happens with the next</p> <p>8 presentation of Phase II data, the stock price can't go up</p> <p>9 because you're already expecting it to be a \$7 to \$8 billion</p> <p>10 drug and you're not going to get any new information about it</p> <p>11 for at least two years until the Phase III results come in.</p>
Professor Paul Gompers explained why Elan's price already reflected investor expectations that bapi would be a blockbuster drug with \$7-\$8 billion in sales in 2015.	Tr. 2586:23-2588-3; DX 1144-A, at 1 (July 21, 2008, Cowen & Co. report).	<p>[<i>Professor Gompers discussing DX 1144-A</i>]</p> <p>23 Q. And that \$16.5 billion, that would be the value, I take it,</p> <p>24 of Elan?</p> <p>25 A. Exactly. The total value of Elan. And if you convert it</p> <p>1 on a per share basis, it's roughly \$35 a share, \$34.93.</p> <p>2 Q. If we could turn back to page 2 of this report. Just</p> <p>3 highlight that same paragraph we were looking at.</p> <p>4 So, in the first sentence where it says: "We estimate</p> <p>5 that Elan's current \$16 billion plus valuation," is that where</p> <p>6 they got the 16 billion valuation?</p> <p>7 A. Yes. So, the 16 billion here ties back to the Exhibit on</p> <p>8 page 11 of the report.</p> <p>9 Q. If you read into the -- well, if you follow that sentence,</p> <p>10 it says, "implies approximately \$7 to \$8 billion plus in</p> <p>11 bapineuzumab sales by 2015." Why is that? Why does the</p> <p>12 16 billion valuation imply \$7 to \$8 billion in bapineuzumab</p> <p>13 sales in 2015?</p> <p>14 A. So, when you do a discounted cash flow, you don't discount</p>



EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		<p>15 the sort of best-case or worst-case scenario. You discount  16 what you expect to happen, what's going to happen? And so what  17 this means is you have to be nearly a hundred percent certain  18 that you're going to get \$7 to \$8 billion of bapi sales in  19 order to back into that \$16 billion. So there is no  20 probability adjustment that you don't hit that. It's sort of  21 that's what you're expecting to hit.  22 Q. OK. And how does \$7 to \$8 billion of sales compare with  23 other drugs in the market at that time?  24 A. It would be an absolute blockbuster. So I -- if it was  25 between 7 and 8 billion, it would be the second best-selling  1 drug in the world. Lipitor would be number one at 13 and a  2 half billion. But if it were to achieve 7 to 8 billion, it  3 would be the second best-selling drug in the world.</p>
<p>Professor Paul Gompers explained why a risk adjustment was necessary for Elan's price due to the uncertainty of bapi achieving FDA approval or market success.</p>	<p>Tr. 2588:4-15; DX 1144-A (July 21, 2008, Cowen &amp; Co. report).</p>	<p>[<i>Professor Gompers discussing DX 1144-A</i>]  4 Q. If you look lower down that same paragraph, Mr. McLeod, it  5 says "And Phase III data are more than two years away so a risk  6 adjustment is warranted."  7 What does that mean, and why is a risk adjustment  8 warranted?  9 A. Well, because it's not certain that bapi would be approved.  10 So, there are multiple stages a drug guess [<i>sic</i>] through. If you  11 look at drugs that get to Phase III, only about 64 percent end  12 up being approved. So, what the analyst is saying here is  13 that, you know, really you need to make some adjustment to this  14 because there is at least some reasonable probability that bapi  15 isn't going to be approved and successful on the market.</p>
<p>Mr. Martoma received a Brean Murray report with a sell recommendation for</p>	<p>DX 9-A (July 11, 2008, e-mail from Jandovitz to Martoma attaching</p>	<p>"New Recommendation: SELL"  "[W]e believe that any bapineuzumab-related disappointment, especially from the full</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
Elan on July 11, 2008.	the Brean Murray report); DX 9 (July 11, 2008, Brean Murray Carret & Co. report).	<p>data release at this month's ICAD meeting, will dramatically decrease Elan's market value." (DX 9, at 1.)</p> <p>"Therefore, our belief that bapineuzumab is not likely to be commercially viable, combined with the significant rise in Elan's market value since preliminary phase 2 AD results were released... leads us to the conclusion that any significant ICAD-related downtick in bapineuzumab enthusiasm will have a significantly negative impact on Elan's market valuation." (DX 9, at 2.)</p> <p>"Therefore, given our projected clinical failures for bapineuzumab, we view Elan's market value as inflated." (DX 9, at 12-13.)</p>
Professor Paul Gompers explained why Elan's price was "inflated" due to "projected clinical failures" for bapi.	Tr. 2605:15-2606:6; DX 9 (July 11, 2008, Brean Murray Carret & Co. report).	<p>[<i>Professor Gompers discussing DX 9</i>]</p> <p>15 And if you could read the bottom line which carries</p> <p>16 over to the next page?</p> <p>17 A. Starting at where? "Therefore"?</p> <p>18 Q. Starting at "Bottom line."</p> <p>19 A. OK. "Bottom line, our EPS estimates for 2008, 2009, 2010,</p> <p>20 '11, '12 and '13 are negative 51 cents, negative 28 cents, 7</p> <p>21 cents, 54 cents, 81 cents, \$1.19, respectively. Despite</p> <p>22 revenue and expense estimates that we view as generous, we</p> <p>23 believe that the existing business lines, even if they can</p> <p>24 continue the strong growth we project, are far from sufficient</p> <p>25 to support Elan's market value. Therefore, given our projected</p> <p>1 clinical failures for bapi, we view Elan's market value as</p> <p>2 inflated."</p> <p>3 Q. What does it mean for the market value to be inflated?</p> <p>4 A. It means that the value, the fair market value, based on</p> <p>5 the revenue and cash flows, is below where the current market</p> <p>6 price is.</p>
Professor Paul Gompers testified that the majority	Tr. at 2648:4-18.	<p>4 Q. Professor Gompers, how did the number of positive or buy</p> <p>5 reports in July of 2008 compare with the number of negative or</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
of analysts who covered Elan in July 2008 were either negative or neutral, which was unusual.		<p>6 sell reports?</p> <p>7 A. So, there are three categories. There are buys, there are</p> <p>8 sells and there are neutrals. Typically, when you do</p> <p>9 academic -- when people do academic research, neutrals are</p> <p>10 classified as negative because historically the vast majority</p> <p>11 of analysts issue positive or buy reports. So, in July it was</p> <p>12 something like one-third were buy and two-thirds were sell or</p> <p>13 neutral.</p> <p>14 Q. How does that compare to the market in general?</p> <p>15 A. For a typical stock -- before the Eliot Spitzer agreement</p> <p>16 with the banks, it was something like 90, 95 percent. Over the</p> <p>17 last decade, it's been something like about two-thirds are</p> <p>18 positive buy recommendations.</p>
Mr. Martoma received a Summer Street Research Partners report warning that "[t]here is a very high risk of failure" for Elan on June 25, 2008.	DX 1118 (June 26, 2008, e-mail from Lyndon to Martoma attaching the Summer Street Research Partners report); DX 1118-A (June 25, 2008, Summer Street Research Partners report).	<p>"Our experts appeared optimistic about Elan's Phase II data, but one stated, 'post hoc analysis makes me incredibly uncomfortable...until it is replicated (prospectively in a clinical trial) no one will trust it.'" (DX 1118-A, at 1.)</p> <p>"One expert said that the failure to meet the DAD endpoint would prevent FDA approval of bapineuzumab." (DX 1118-A, at 1.)</p>
Mr. Martoma received a Canaccord Adams report with a sell recommendation for Elan on July 17, 2008.	DX 11-A (July 17, 2008, e-mail from Canaccord Adams to Martoma and others attaching its report); DX 11-B (July 17, 2008, Canaccord Adams report);	<p>"While we believe that bapineuzumab will be the first disease modifying AD therapy to reach the market, the US \$10-15 billion in sales the market expects is not an achievable target, in our view." (DX 11-B, at 1.)</p> <p>"[W]e believe that investors have let the hype rule their decision making." (DX 11-B, at 3.)</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
	DX 1114 (July 17, 2008, e-mail from Ms. Lyndon to Mr. Martoma).	
Ron Ellis (Deutsche Bank) advised Mr. Martoma on July 18, 2008, that he believed that Elan's price would fall.	DX 1445 (July 18, 2008, e-mail from Mr. Ellis to Mr. Martoma).	<p>“Believe that recent weakness is related to a broad range of things, including:</p> <ul style="list-style-type: none"> <li>* profit taking in names that have worked</li> <li>* sector rotation, as health care has caught a bid</li> <li>* the cessation of short covering in the name</li> <li>* technical resistance</li> <li>* increased awareness going into ICAD that there are ~12 MAb's for beta amyloid in development. With LLY's agent having a posters at ICAD and DNA mentioning theirs on the call Monday night, there's been some re-examination of the competitive environment</li> <li>* concern ahead of The Lancet articles – both for Dimebon competition and for cautious article &amp; commentary on targeting beta amyloid</li> </ul> <p>Unless ELN has something to reinvigorate investor interest, see shares going back to \$26 with pauses at \$30, \$29 and \$27. Those are just some thoughts. What do you think? Keep in mind, I'm a ELN bull.”</p>
A UBS report from July 25, 2008, gave a neutral recommendation for Elan.	DX 122 (July 25, 2008, UBS Investment Research report).	“The market is pricing in a high likelihood of this drug achieving super blockbuster status given unmet clinical needs in this area.” (DX 122, at 1.)
Professor Paul Gompers testified that Elan's actual price exceeded its target price in June and July 2008.	Tr. 2639:25-2640:9.	<p>25 Q. So, there are some that said buy or overperform or the 1 like, right? You're saying that there were more that were 2 negative in July. Is it also true that in June there were 3 analyst reports with recommendations to sell the month earlier?</p> <p>4 A. There were, but they were more temperate. So if you look 5 at target price, for example, the target price was actually 6 above the stock -- the median target price for analyst was</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		7 immediately above the stock price in June, and then subsequent 8 to the Phase II announcement, actually the stock price went 9 well above where the target price was for the median analyst.
Katie Lyndon concluded that market expectations for the success of bapi were too high in July 2008 “to the point where they were pretty impossible to meet.”	GX 294, at 1 (July 30, 2008, e-mail from Ms. Lyndon to Mr. Martoma).	“My takeaway is that all the hype around this drove expectations really high; to the point where they were pretty impossible to meet.”
<b>(4) SAC HEALTHCARE SPECIALISTS RECOMMENDED THAT SAC SELL ITS ELAN AND WYETH POSITIONS.</b>		
Timothy Jandovitz testified that two other SAC healthcare specialists – David Munno and Benjamin Slate – were negative on the investment in Elan.	Tr. 169:3-12.	3 Q. When Mr. Devlin-Brown was asking you questions about Elan 4 and Wyeth, you explained how Mr. Martoma was bullish or he 5 thought -- he was optimistic about the prospects of Elan in 6 2006 and 2007, isn't that right? 7 A. That's correct. 8 Q. But two other portfolio managers, Mr. Munno and Mr. Slate, 9 were actually pretty negative on the stock, weren't they? 10 A. I believe they were not positive, they were negative. To 11 the degree to which they were negative, I don't know. But I 12 think they were negative.
Katie Lyndon testified that Mr. Munno emphatically recommended to Steve Cohen throughout 2008 that he sell the Elan and Wyeth shares.	Tr. 2094:4-10.	4 Q. And you're aware, Ms. Lyndon, that Mr. Munno specifically 5 disagreed with Mathew about his view on whether Elan was a good 6 investment in the spring of 2008, right? 7 A. That's true, yes. 8 Q. And he made that view known to Mr. Cohen and to others at 9 SAC Capital, right? 10 A. Yes, he was quite vocal about that.

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
Chandler Bocklage testified that Mr. Munno and Mr. Slate emphatically recommended that SAC sell the Elan and Wyeth long positions.	Tr. 2549:2-12.	<p>2 Q. And were you familiar with a Mr. Munno and a Mr. Slate?</p> <p>3 A. Yes.</p> <p>4 Q. Who were they?</p> <p>5 A. Munno and Slate worked in Intrinsic also. They worked with</p> <p>6 another portfolio within Intrinsic.</p> <p>7 Q. Were they also in healthcare?</p> <p>8 A. Healthcare guys, yes.</p> <p>9 Q. Did you understand that they had a very critical view of</p> <p>10 Elan and Wyeth?</p> <p>11 A. Yes, they were very vocal about their opposition to the</p> <p>12 idea -- to the long Wyeth and Elan position.</p>
SAC healthcare specialist Edmund Debler advised Steve Cohen that he was concerned about a sell-off of Elan after ICAD.	DX 1424, at 2 (July 27, 2008, e-mail from Mr. Debler to Cohen Account – Healthcare).	“I am rather surprised at ELN’s share price move last week, as I would have expected the shares to move up into the presentation – I am much more concerned about a sell-off after Tuesday.”
<b>(5) BIA WARNED MR. MARTOMA THAT THE PHASE II BAPI TRIAL RESULTS WOULD BE DISAPPOINTING.</b>		
An April 3, 2008, BIA report sent to Mr. Martoma concluded that both Elan’s and Wyeth’s management displayed a lack of confidence in the success of bapineuzumab.	DX 1109 (April 3, 2008, e-mail from Devine to Martoma attaching a BIA report with an analysis of corporate disclosures from Elan and Wyeth earnings calls and an Elan investor conference presentation); DX 1109-A (April 3, 2008, BIA report).	<p>“Overview –...Phase II interim data for AAB-001 are likely not as strong as management anticipated.” (DX 1109-A, at 1.)</p> <p>“Throughout the disclosures made by both Elan and Wyeth, management provides a number of indicators that neither the first nor second Phase II interim results were as compelling as management expected and not sufficient on their own merits to drive the initiation of the Phase III trial.” (DX 1109-A, at 1.)</p> <p>“Both Elan’s and Wyeth’s management displays a lack of confidence in success of AAB-001.” (DX 1109-A, at 2.)</p> <p>“Management is uncertain about the impact of vasogenic edema in the AAB-001 clinical trials.” (DX 1109-A, at 2.)</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
An April 11, 2008, BIA Report sent to Mr. Martoma concluded that Elan CEO Kelly Martin's behaviors at a March 13, 2007, healthcare conference reflected a lack of confidence in bapineuzumab and its Phase II data.	DX 1134 (April 11, 2008, e-mail from Devine to Martoma attaching a BIA report with an analysis of Elan's disclosures at the March 13, 2007, Cowen and Company Annual Health Care Conference); DX 1134-A (April 11, 2008, BIA report).	<p>"In general, his behaviors still reflect a lack of confidence in AAB-001 and its Phase II data." (DX 1134, at 1.)</p> <p>"The absence of any significant disclosure of data after the mid-year interim analysis and the subsequent delay in presenting the Phase II data therefore strongly suggest that something occurred subsequent to this presentation to change management's willingness or commitment to their promised transparency." (DX 1134, at 2.)</p>
An April 29, 2008, BIA report sent to Mr. Martoma concluded that Wyeth management's behavior generally indicated a lack of confidence in bapineuzumab (and other drugs).	DX 1146 (April 30, 2008, e-mail from Devine to Martoma attaching a BIA report with an analysis of Wyeth's Q1 2008, earnings call on April 22, 2008); DX 1146-B (April 29, 2008, BIA report).	<p>"Based upon BIA's Tactical Behavior Assessment (TBA) methodology, this call produced a <b>Medium-High Level of Concern.</b>" (DX 1146-B, at 1.)</p> <p>"Management exhibited medium to high levels of deceptive indicators on most questions." (DX 1146-B, at 1.)</p> <p>"Management has significant concerns regarding the development and approval of several drugs . . . [including] Bapineuzumab." (DX 1146-B, at 1.)</p>
An April 30, 2008, BIA report sent to Mr. Martoma concluded that Elan management's behavior indicated that management was trying to limit investor	DX 1146 (April 30, 2008, e-mail from Devine to Martoma attaching a BIA report with an analysis of Elan's Q1 2008 earnings call on April	<p>"Q108 – Medium-High – Limits Expectations, Lacks Confidence, Uncertainty." (DX 1146-A, at 1.)</p> <p>"Phase II data for Bapineuzumab is not as strong as management would like to discuss." (DX 1146-A, at 1.)</p> <p>"Overall, this type of language may be an indication that management is not fully certain about the takeaway from the Phase II trials and the data may not be as strong</p>



EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
expectations, lacked confidence, or was uncertain about potentially significant issues.	30, 2008); DX 1146-A (April 30, 2008, BIA report).	as he would like to admit.” (DX 1146-A, at 5.)
A May 2, 2008, BIA report sent to Mr. Martoma concluded that Elan management exhibited medium-to-high levels of deceptive indicators on a number of questions, limited the scope of its disclosures and seemed uncertain regarding significant issues related to bapineuzumab and the Phase II results.	DX 1145 (May 2, 2008, e-mail from Devine to Martoma attaching a BIA report with an analysis of Elan’s remarks at the Morgan Stanley 2008 Global Healthcare Unplugged Conference); DX 1145-A (May 2, 2008, BIA report).	<p>“Morgan Stanley Conference – Medium-High – Evasive, Lacks Confidence.” (DX 1145-A, at 1.)</p> <p>Elan CEO Kelly Martin’s “behaviors did not hint at reassurance or affirmation that the Phase II data would be as compelling as earlier disclosures had indicated it would have to be to initiate Phase III. Instead, Mr. Martin’s behaviors suggest that the Phase II data may not be as strong as originally hoped but that, when analyzed in the context of the Phase I and AN 1792 data, were sufficient to proceed to Phase III.” (DX 1145-A, at 2.)</p> <p>“Mr. Martin was asked about his previous statements that Elan would go into Phase III studies only on the basis of clinically meaningful and even ‘spectacular’ data, specifically ‘what exactly is spectacular?’ Mr. Martin made a grooming gesture (head scratch), offered the non-answer that ‘spectacular is probably in the eyes of the beholder.’” (DX 1145-A, at 2.)</p>
A May 8, 2008, BIA report sent to Mr. Martoma concluded that Elan’s management appeared evasive, uncertain, and lacking in confidence in bapineuzumab.	DX 1148 (May 8, 2008, e-mail from McCann to Martoma attaching a BIA report with an analysis of ELN Company Day 5-7-08); DX 1148-A (May 8, 2008, BIA report).	<p>“Presenters – Kelly Martin, Ted Yednock, Dale Schenk, Allison Hulme, Karen Kim, and Shane Cooke” (DX 1148-A, at 1.)</p> <p>“Q407 – Medium – Lacks Confidence, Underlying Concerns; Q108 – Medium-High – Limits Expectations, Lacks Confidence, Uncertainty; Morgan Stanley Conference – Medium – High – Evasive, Lacks Confidence; Company Day – Medium-High – Evasive, Uncertainty.” (DX 1148-A, at 1.)</p> <p>“The event’s organization and content in and of itself likely reflects management’s attempt to control its disclosures and limit visibility into some of the issues of interest to investors, primarily the progress of the AAB-001 clinical trials.” (DX 1148-A, at</p>



EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		<p>1.)</p> <p>“In her prepared remarks, Dr. Hulme displayed several behavioral clusters indicating a lack of confidence in the results of the AAB-001 program, specifically in the Phase II data, the decision to move into Phase III, and the timing of the Phase III enrollment.” (DX 1148-A, at 2.)</p> <p>“[Dr. Hulme’s] behaviors may indicate that the analysis of the data is either taking longer than expected or not resulting in as positive a result as hoped, which would require further analysis and ‘packaging’ as management had previously stated.” (DX 1148-A, at 3.)</p>
<p>A July 9, 2008, BIA report sent to Mr. Martoma concluded that Elan CEO Kelly Martin exhibited medium-to-high levels of deceptive indicators on a number of questions, tried to limit the information disclosed, and seemed uncertain regarding significant issues related to bapineuzumab and the Phase II results.</p>	<p>DX 1128 (July 9, 2008, e-mail from Freedy to Martoma attaching a BIA report with an analysis of recent ELN disclosures at the June 11, 2008, Goldman Sachs Health Care Conference); DX 1128-A (July 9, 2008, BIA report).</p>	<p>“Management exhibited medium to high levels of deceptive indicators on a number of questions. Behaviors generally indicate management is trying to limit information and seems uncertain regarding potentially significant issues.” (DX 1128-A, at 1.)</p> <p>“Management attempts to limit the level of disclosure provided, particularly with respect to the AAB-001 Phase 2 clinical study . . . From the beginning of his presentation, Mr. Kelly exhibits behaviors indicating a reluctance to provide much information about the company.” (DX 1128-A, at 1.)</p> <p>“Management displays indicators of uncertainty about the Phase 2 data...[Kelly Martin] attempts several times to focus investors on the company’s entire portfolio of AD programs, not just the AAB-001 program.” (DX 1128-A, at 1.)</p> <p>“Management displays indicators of uncertainty about the Phase 2 data (Issues 2, 4, 8). Mr. Martin displays a small behavioral cluster relative to the upcoming release of the top-line data on Phase 2 which may signal uncertainty about either the results of the study or the reaction of investors when it is released.” (DX 1128-A, at 1.)</p> <p>“[Kelly Martin’s] focus on the fact that the program is ‘more than just one trial with one endpoint’ may signal that he would like to downplay the results of Phase 2, when they are eventually released, and direct investor attention to the Phase 3 execution as ‘equally as important.’” (DX 1128-A, at 4.)</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		<p>“[Kelly Martin’s] cautious tone may signal that he may expect investors to be disappointed about upcoming developments in the AAB-001 program, possibly the release of the Phase 2 study.” (DX 1128-A, at 5.)</p>
<p>A July 9, 2008, BIA report sent to Mr. Martoma concluded that the bapineuzumab Phase II “final results, when fully disclosed, will not be as positive as implied in [the] press release.”</p>	<p>DX 1128 (July 9, 2008, e-mail from Freedy to Martoma attaching a BIA report with an analysis of Elan’s June 17, 2008, press release); DX 1128-B (July 9, 2008, BIA report).</p>	<p>“The lack of quantitative data and the abundance of vague and subjective terms strongly suggest that the final results, when fully disclosed, will not be as positive as implied in this press release.” (DX 1128-B, at 1.)</p> <p>“[The Elan and Wyeth CEO’s] statement are far more muted than their earlier expectations for ‘spectacular’ data.” (DX 1128-B, at 3.)</p>
<p>On July 15, 2008, Terry Freedy (BIA) e-mailed Mr. Martoma reiterating her concerns about Elan and Wyeth and concluding that both companies lacked confidence in the success of bapi.</p>	<p>DX 1163 (July 15, 2008, e-mail from Ms. Freedy to Mr. Martoma).</p>	<p>“I believe that something occurred to cause Elan and Wyeth to back down from their positive comments about P2, and the only thing that we know occurred was the first interim look. I think that look told them that the results were not going to be as ‘spectacular’ as they hoped, even though there were some positive outcomes worthy of pursuit.”</p>
<b>(6) THE SCIENCE BEHIND BAPI WAS IN DOUBT.</b>		
<p>Dr. Gilman testified that he was discussing <i>The Lancet</i> article and its skepticism about the</p>	<p>DX 875 (Clive Holmes et al., <i>Long-term effects of A<math>\beta</math><sub>42</sub> immunisation in Alzheimer’s disease</i>:</p>	<p><b>“Summary:</b> Background Immunisation of patients with Alzheimer’s disease with full-length amyloid-<math>\beta</math> peptide (A<math>\beta</math><sub>42</sub>) can clear amyloid plaques from the brain. Our aim was to assess the relation between A<math>\beta</math><sub>42</sub> immune response, degree of plaque removal, and</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
amyloid beta mechanism, with his clients, including Mr. Martoma.	<i>follow-up of a randomized, placebo-controlled phase I trial</i> , THE LANCET (July 19, 2008).)	long-term clinical outcomes.” (DX 875, at 1.)  “ <b>Interpretation:</b> Although immunisation with A $\beta$ <sub>42</sub> resulted in clearance of amyloid plaques in patients with Alzheimer's disease, this clearance did not prevent progressive neurodegeneration.” (DX 875, at 1.)
	Tr. 1727:22-1728:9.	22 Q. Are you familiar, Dr. Gilman, that at this time -- the date 23 is July 18th in this e-mail, but in or about that time, that 24 there was an article -- this article published in the Lancet 25 Journal that questioned whether the beta-amyloid theory 1 undermining bapineuzumab would actually be successful at 2 treating Alzheimer's disease? 3 A. Yes. 4 Q. And is it fair to say you discussed this article and this 5 commentary with many of your GLG clients at this time? 6 A. Yes. 7 Q. Now, let me direct your attention -- well, and you also 8 discussed this article with Mr. Martoma, isn't that right? 9 A. Yes.
In July 2008, it was announced that the Flurizan Phase III study failed, raising concerns about studies – like the bapi Phase II trial – that employed a post hoc analysis.	Tr. 2145:4-15; DX 1151 (July 11, 2008, instant message between Lyndon and Martoma).	[Kathryn Lyndon reading portions of DX 1151]  4 Q. And can you then read for us, Ms. Lyndon, the rest of your 5 comments in this instant message chat? 6 A. Sure. “But now he is going into further explanation. But 7 opening on negative. Just a heads up.” That's like a side bar 8 I think. “Appears there was no trend in carriers. Any post 9 hoc analysis carries considerable risk. On the other hand, 10 seeing the biological barrier move in the same direction as the 11 clinical gives him confidence that these results are not 12 spurious and probably will be reproduction.” Like reproduced, 13 I guess. “Concerned that they did not achieve outcome on DAD.

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		14 A lesson from Flurizan is that post hoc analysis are fraught 15 with risk.”
<b>(7) RUMORS ABOUT PML ASSOCIATED WITH TYSABRI EMERGED LEADING UP TO ICAD.</b>		
Katie Lyndon testified that Mr. Martoma was focused on the safety risks, including PML, associated with Tysabri as part of his analysis of Elan.	DX 1112 (February 27, 2008, e-mail from Ms. Lyndon to Mr. Martoma).	“The FDA and Biogen have sent a ‘Dear Doctor’ letter to physicians highlighting a change to the Tysabri label that was made in January, 2008....While the language of the warning is serious, we do not believe it will have a material impact on the commercial prospects of Tysabri. That said, we believe a sharp sell off on the headline is a reminder that the stock is likely to have significant volatility if/when a case of PML emerges.” (DX 1112, at 1.)
	Tr. 2084:25-2085:10.	[Kathryn Lyndon discussing DX 1112]  25 Q. And here, this e-mail that you are forwarding to 1 Mr. Martoma, the underlying e-mail is talking about a concern 2 about that condition for Tysabri and indicating that Credit 3 Suisse’s perspective here in February of 2008 that they hoped 4 it would not have a material impact on the commercial prospects 5 of Tysabri. Do you see that? 6 A. I do. 7 Q. And that is very consistent with what you described as when 8 you initially started working with Mr. Martoma, his focus on 9 the risks related to the Tysabri side effects, right? 10 A. Yes.
Dr. Gilman testified that Tysabri had previously been taken off the market for incidence of PML.	Tr. 1535:13-15.	13 Q. Are you aware that Tysabri was taken off the market back in 14 2005 of cases of PML? 15 A. Yes.

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
On February 27, 2008, Mr. Martoma received a Credit Suisse report regarding Biogen, Elan's partner in developing and marketing Tysabri, warning of "significant volatility if/when a case of PML emerges."	DX 1112 (February 27, 2008, e-mail from Ms. Lyndon to Mr. Martoma).	<p>"FW: CS Research: BIIB: Comment on Tysabri Dear Doctor Letter"</p> <p>"While the language of the warning is serious, we do not believe it will have a material impact on the commercial prospects of Tysabri. That said, we believe the sharp sell off on the headline is a reminder that the stock is likely to have significant volatility if/when a case of PML emerges."</p>
On May 15, 2008, Mr. Martoma received a Caris & Co. report concluding that "[a]nother PML report could impact strong Tysabri expectations."	DX 1143 (May 15, 2008, e-mail from Peter Newman to Martoma attaching a Caris & Co. report); DX 1143-A (May 15, 2008, Caris & Co. report).	<p>"ELN/Sell, \$12B Cap, \$27.33, 05/14/08) - Mind Over Matter: Initiated with a 5*/Sell Rating" (DX 1143-A, at 1.)</p> <p>"Another PML report could impact strong Tysabri expectations. We believe the potential for additional reports of PML remains a significant risk to Tysabri's anticipated strong sales ramp, as competitors are likely to exploit such reports with prescribing physicians as they have in the past." (DX 1143-A, at 1.)</p>
Katie Lyndon testified that, in July 2008, Mr. Martoma was concerned that the risk of PML associated with Tysabri could have a negative impact on Elan's price.	DX 1117 (July 8, 2008, e-mail from Lyndon to Martoma forwarding a July 8, 2008, Cowen report).	"Elan and Biogen Idec's Tysabri is the efficacy leader in the multiple sclerosis market and was launched in March for refractory Crohn's disease, but the looming threat of PML keeps us cautious." (DX 1117, at 1.)
	Tr. 2087:25-2088:10.	<p>[<i>Kathryn Lyndon discussing DX 1117</i>]</p> <p>25 Q. Was this Tysabri drug a drug that Elan was co-developing 1 with another company called Biogen?</p> <p>2 A. Yes.</p> <p>3 Q. Is it fair to say that you followed developments with</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
		<p>4 respect to Tysabri both as it related to Elan and as it related</p> <p>5 to Biogen?</p> <p>6 A. Yes.</p> <p>7 Q. Am I right that this is consistent with what you described</p> <p>8 as Mathew's concern as well throughout that the threat of PML</p> <p>9 could have a negative impact on Elan stock?</p> <p>10 A. That's right.</p>
<p>On July 8, 2008, Summer Street Research Partners issued a report entitled: "No Confirmed PML Yet, but Expected at Some Point."</p>	<p>DX 163-B (July 8, 2008, Summer Street Research Partners report); DX 163-A (summary of a conference call held on July 7, 2008, to discuss PML rumors).</p>	<p>"Summer Street Research Partners hosted a 2<sup>nd</sup> conference call yesterday, July 7<sup>th</sup> to discuss 12 unconfirmed reports of progressive multifocal leukoencephalopathy (PML) in the Adverse Events Reporting System (AERS) between January 2007 and June 2008. We have been unable to confirm any PML cases since the initial 3 that preceded removal of Tysabri from the market in early 2005." (DX 163-B, at 1.)</p> <p>"We expect BIIB to update the confirmed PML cases and patients on the drug on the Q2 conference call. On Biogen-Idec's April 23<sup>rd</sup> earnings conference call, the company stated that at the end of March there were approximately 26,000 patients on Tysabri with no new cases of confirmed PML. We expect BIIB to report Q2 earnings during the week of July 20<sup>th</sup>." (DX 163-B, at 1.)</p>
<p>On July 25, 2008, UBS issued a report noting that additional PML cases in Tysabri could increase the risk profile for an investment in Elan.</p>	<p>DX 122 (July 25, 2008, UBS Investment Research report regarding Tysabri).</p>	<p>"Last, but not least, the occurrence of further PML cases would increase Tysabri's risk profile although, you may see more impatc [sic] forma [sic] share price perspective than on fundamentals as we believe the risks are better understood now the drug has been on the market for some time." (DX 122, at 8.)</p>
<b>(8) SELLING ELAN AND WYETH SECURITIES WOULD LOCK IN PROFITS.</b>		
<p>Katie Lyndon testified that, as early as Spring 2008, Mr. Martoma informed her that they could "decide at the last minute if we wanted to</p>	<p>Tr. 2047:14-2048:11.</p>	<p>14 Q. And in the spring of 2008 timeframe, do you recall any</p> <p>15 answers he provided as to your question about risk with respect</p> <p>16 to the Alzheimer's portfolio?</p> <p>17 A. Yeah. I mean, he seemed -- he said that he still believed</p> <p>18 that it was a good position to hold. I do specifically</p> <p>19 remember him saying something along the lines of that he</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
change our minds” on Elan “and, you know, just not have a position or go – even go short.”		<p>20 believed that the stock would trade up until -- up into the</p> <p>21 conference, meaning like up until the data was released at that</p> <p>22 conference so that he felt very comfortable that unless there</p> <p>23 is some sort of like a safety issue with the drug and a</p> <p>24 multiple sclerosis issue, that we were somewhat protected in a</p> <p>25 long position. Because it was unlike -- people seemed to be</p> <p>1 getting enthusiasm up ahead of the conference, but that he --</p> <p>2 we could decide at the last minute if we wanted to change our</p> <p>3 minds and, you know, just not have a position or go -- even go</p> <p>4 short. He did mention that to me at one point that spring,</p> <p>5 and, umm, you know, I sort of at that time didn't focus that</p> <p>6 much on it.</p> <p>7 Q. Did he tell you in the spring of 2008 anything about why he</p> <p>8 felt he would be able to make a decision at the last minute?</p> <p>9 A. I think he just -- I think it had to do with the stock</p> <p>10 being relatively liquid so that you could change your position</p> <p>11 pretty quickly.</p>
SAC risk manager Benjamin Dunn – who advised Mr. Martoma on his portfolio – stated in July 2008: “markets are f*cked up right now.... This is a tough environment with institutions most likely going to cash right now....”	DX 1423 (July 3, 2008, e-mail from Mr. Dunn to Mr. Martoma).	<p>“It[‘s] been mixed where it is coming from and markets are f*cked up right now. Y[e]sterday you lost 2M on ELN and WYE so that was 2/3 of pnl right there and WYE didn't help you losing there on Tues while net short exposure hurt you as well. So nothing you don't already probably see. This is a tough environment with institutions most likely going to cash right now because they're clueless.”</p>
Timothy Jandovitz testified that Mr. Martoma knew that Elan was a	Tr. 147:11-17.	<p>11 Q. Did you have any personal view at this point in July 11th,</p> <p>12 or that range, as to how risky this Elan position was?</p> <p>13 A. Generally speaking, I knew it was risky.</p>

EVIDENCE	CITATION	TRANSCRIPT/EXHIBIT REFERENCE
risky investment in July 2008.		<p>14 Q. Did you ever communicate that to Mat Martoma during 15 July 2008?</p> <p>16 A. I think it was understood by both parties that it was 17 risky.</p>
On July 22, 2008, Mr. Martoma asked Mr. Jandovitz about a decrease in Wyeth's stock price, and he responded that investors were "profit taking in front of ICAD."	DX 369 (July 22, 2008, e-mail from Jandovitz to Martoma).	<p>"Subject: wye"</p> <p>Mr. Jandovitz: "Near lows of day, down 1.50, I know they report tmrw, but still, big move, trying to find out why"</p> <p>Mr. Martoma: "Yo – pls keep me up on this. If you hearing anything."</p> <p>Mr. Jandovitz: "Of course, I have been digging for the last hour. Profit taking in front of qtr, blah blah blah. Profit taking in front of icad."</p>